

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID BEACHEM,

Plaintiff,

V.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS *et al.*,

Defendants.

Case No. C08-5185 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
ACTION WITHOUT PREJUDICE

This matter comes before the Court on the recommendation of the Magistrate Judge that Plaintiff's civil rights action be dismissed for failure to exhaust administrative remedies. The Plaintiff has filed an objection asserting that he completed the grievance procedure prior to filing this suit.

The Court is not persuaded by Plaintiff's argument. The record reflects that Plaintiff filed a Level I grievance to which the Department of Corrections responded. Plaintiff did not appeal the Level I response. Having failed to exhaust administrative procedures, Plaintiff is barred from pursuing court action. See Porter v. Nussle, 534 U.S. 516 (2002).

The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley Arnold, objection to the report and recommendation, and the remaining record, does hereby find and

(1) The Court adopts the Report and Recommendation;

ORDER

(2) Defendants' motion to dismiss is **GRANTED**. Plaintiff did not exhaust his administrative remedies prior to filing this action as required by the Prison Litigation Reform Act.

(3) Plaintiff's action is **DISMISSED**, without prejudice.

The Clerk is directed to send copies of this Order to plaintiff, counsel for Defendants, and to the Hon. J. Kelley Arnold.

DATED this 31st day of October, 2008.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE